Supreme Court, U.S.
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No. 95-908

In The

Supreme Court of the United States

October Term, 1995

CONTEL CELLULAR INC. AND CONTEL CELLULAR OF ILLINOIS, INC.,

Petitioners,

v.

LEAF RIVER VALLEY CELLULAR TELEPHONE CO., INC. AND CENTRAL CELLULAR TELEPHONES, LTD.,

Respondents.

On Petition For A Writ Of Certiorari To The Illinois Appellate Court

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court has jurisdiction to review an interlocutory order of a state appellate court where the matter remains to be tried in the lower state court and no relief has yet been granted, because some of the relief that might be awarded after trial might implicate federal regulations.

2. Whether an Illinois state court has the power to adjudicate damage claims under Illinois law for breach of a contract and breach of the fiduciary duty owed by the general partner of an Illinois limited partnership, where the claims pertain to a business that operates under FCC licenses.

LIST OF AFFILIATED CORPORATIONS

Pursuant to Supreme Court Rule 29.6, the following is a list of the parent corporations and non-wholly owned subsidiaries of each respondent:

Leaf River Valley Cellular Telephone Co., Inc. ("Leaf River"): Leaf River Telephone Company owns 51% of the stock of Leaf River Cellular. United States Cellular Investment Company of Rockford ("USCIC Rockford") owns 49% of the stock of Leaf River Cellular. United States Cellular Investment Company ("USCIC") is the parent corporation of USCIC Rockford. United States Cellular Company ("USCC"), a publicly traded corporation, is the parent corporation of USCIC. Telephone and Data Systems, a publicly traded corporation, owns approximately 80% of the shares of USCC. Leaf River has no non-wholly owned subsidiaries.

Central Cellular Telephones, Ltd. ("Central Cellular"): Sharon Telephone Company owns 25.5% of the stock of Central Cellular. Bergen Telephone Company owns 25.5% of the stock of Central Cellular. USCIC Rockford owns 49% of the stock of Central Cellular. Central Cellular has no non-wholly owned subsidiaries.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF AFFILIATED CORPORATIONS..... ii

JURISDICTIONAL STATEMENT..... 1

STATUTES INVOLVED 1

COUNTERSTATEMENT OF THE CASE 2

REASONS WHY THE PETITION SHOULD BE DENIED 5

I. THIS COURT LACKS JURISDICTION TO HEAR THE PETITION UNDER 28 U.S.C. § 1257 BECAUSE THE ORDER DENYING PETITIONERS' INTERLOCUTORY APPEAL WAS NOT A FINAL JUDGMENT OR DECREE 6

II. NO QUESTION EXISTS THAT THE COMMUNICATIONS ACT EXPRESSLY PRESERVES STATE COURT REMEDIES FOR THE INSTANT CLAIMS FOR BREACH OF CONTRACT AND FIDUCIARY DUTY 11

A. CONTEL'S PATENTLY IRRELEVANT AUTHORITIES RAISE NO QUESTION FOR REVIEW 12

B. CONTEL RAISES NO QUESTION APPROPRIATE FOR REVIEW BECAUSE THIS COURT'S DECISIONS HAVE CONSISTENTLY RECOGNIZED A STATE COURT'S POWER TO ADJUDICATE STATE LAW CLAIMS, EVEN WHERE THEY PERTAIN TO AN FCC LICENSED BUSINESS, AND NO CONFLICT EXISTS 14

TABLE OF CONTENTS – Continued

Page

C. CONTEL RAISES NO QUESTION FOR REVIEW BECAUSE THE FCC CONSISTENTLY AGREES WITH THE INTERPRETATION OF THE COMMUNICATIONS ACT ADOPTED BY THE COURTS BELOW 16

CONCLUSION 18

TABLE OF AUTHORITIES

Page

CASES

Bradley v. Richmond School Board, 416 U.S. 696 (1974) 8

Construction Laborers v. Curry, 371 U.S. 542 (1963) 10

Cooperative Comm. v. AT&T Corp., 867 F. Supp. 1511 (D. Utah 1994) 16

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) ..9, 10

FCC v. Pottsville Broadcasting Co., 309 U.S. 134 (1939) 14

Flynt v. Ohio, 451 U.S. 619 (1981) 11

Houston v. Moore, 3 Wheat. 433 (1818)..... 7

In re Applications of Decatur Telecasting, Inc., 7 FCC Rcd. 8622 (1992)..... 17

In re Applications of KQED, Inc., 6 FCC Rcd. 598 (1991) 17

In re Application of Rodney A. McDaniel, 4 FCC Rcd. 1736 (1989)..... 17

In re Application of Wind N' Sea FM Limited Partnership, 7 FCC Rcd. 2293 (1992)..... 17

In the Matter of Applications of Centel Corp., 8 FCC Rcd. 1829 (1993)..... 16

Interstate Circuit, Inc. v. Dallas, 390 U.S. 676 (1968) 1

KVHP TV Partners, Ltd. v. Channel 12 of Beaumont, Inc., 874 F. Supp. 756 (E.D. Tex. 1995) 16

Market Street Ry. v. Railroad Commission, 324 U.S. 548 (1945)..... 7

TABLE OF AUTHORITIES – Continued

Page

North Dakota Pharmacy Board v. Snyder's Stores, 414 U.S. 156 (1973) 7

O'Dell v. Espinoza, 456 U.S. 430 (1982) 7

Radio Station WOW v. Johnson, 326 U.S. 120 (1945) ..*passim*

Regents of the University System of Georgia v. Carroll, 338 U.S. 586 (1950) 15

San Diego Gas & Elec. Co. v. City of San Diego, 450 U.S. 621 (1981) 7, 8

United Tel. Co. of Carolinas, Inc. v. FCC, 559 F.2d 720 (D.C. Cir. 1977) 15

STATUTES

47 C.F.R. § 22.942 13

28 U.S.C. § 1257 ..... 1, 6, 7

47 U.S.C. § 414 ..... *passim*

OTHER AUTHORITY

Supreme Court Rule 10 11

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Leaf River Valley Cellular Telephone Company, Inc. ("Leaf River") and Central Cellular Telephones, Ltd. ("Central Cellular") respectfully request that this Court deny the Petition for Writ of Certiorari filed by petitioners Contel Cellular Inc. and Contel Cellular of Illinois, Inc. (collectively "Contel") seeking review of the decision of the Illinois Appellate Court.[1]

JURISDICTIONAL STATEMENT

This Court lacks jurisdiction to hear the Petition under 28 U.S.C. § 1257 because the order denying petitioners' interlocutory appeal was not a final judgment or decree.

STATUTES INVOLVED

28 U.S.C. § 1257: State Courts; certiorari

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme

[1] Contel erroneously states that the Illinois Supreme Court's order should be reviewable under § 1257. (Pet. at 1.) Because the Illinois Supreme Court merely declined to review the decision of the Appellate Court, the decision of the Appellate Court (*if* considered final) would be the one reviewable by this Court. *See Interstate Circuit, Inc. v. Dallas*, 390 U.S. 676, 678 n.1 (1968).

> Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

47 U.S.C. § 414: Exclusiveness of chapter.

> Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies.

COUNTERSTATEMENT OF THE CASE

An examination of the proceedings below reveals that Contel's petition improperly seeks review of a nonfinal order. Contel filed a motion to dismiss the complaints filed against it by Leaf River and Central Cellular in the Illinois circuit court. On October 12, 1994, the circuit court denied Contel's motion to dismiss. On December 14, 1994, the circuit court denied Contel's motion for a finding that a question of law existed appropriate for interlocutory appeal under Ill. S.Ct. Rule 308. Contel nevertheless perfected an appeal under Ill. S.Ct. Rule 307, by characterizing its motion to dismiss as also a motion for a stay. On March 21, 1995, the Illinois Appellate Court affirmed the order denying Contel's motion to dismiss.

The court did not address what relief would be appropriate upon a final judgment, but held only that no impediments existed to the trial court's jurisdiction. (*See* Pet. at A16.) On October 4, 1995, the Illinois Supreme Court denied Contel's Petition for Leave to Appeal the interlocutory order of the Appellate Court, remanding the cases for trial on the merits. No final judgment or decree has been entered in these cases by any lower court. Rather, the cases have been proceeding in the circuit court.

Moreover, the complexion of the cases – and of the issues Contel seeks to have this Court review – has already changed during the course of these further proceedings. For example, the complaints Contel attaches to its Petition and refers to throughout were in fact mooted by amended complaints filed on August 17, 1995 that altered the prayers for relief, *e.g.*, by dropping any request for injunctive relief.

If this Court determines to examine the merits of Contel's petition, Contel's statement of the case describes most of the facts leading up to this litigation, but contains some material deficiencies regarding the background of the primary legal issue decided below – whether an Illinois state court has the power to decide claims for breach of a contract governed by Illinois law and for breach of the fiduciary duties owed under Illinois law by the general partner of an Illinois limited partnership.

Leaf River and Central Cellular filed these consolidated actions seeking relief for a breach of contractual and fiduciary obligations owed to them and the Rockford

MSA Limited Partnership (the "Partnership"). The Partnership provides cellular telephone service in and around Rockford, Illinois under an FCC license. Plaintiffs contend that Contel, the general partner of the Partnership, breached its obligations under the Partnership Agreement and its fiduciary duties by misappropriating for itself the opportunity to provide cellular service in Illinois RSA 1, a cellular market adjoining Rockford. Accordingly, Leaf River and Central Cellular seek money damages for the value of the lost business opportunity Contel misappropriated.

Contrary to Contel's representations in its petition, (*see* Pet. at 14, 15, 17), Leaf River and Central Cellular have repeatedly and consistently explained that they do not seek "ownership" or "control" of the FCC license that Contel obtained for itself, nor do they seek a "transfer" of the FCC license for Illinois RSA 1. (*See* App. Order, Pet. at A15.) Plaintiffs have not requested specific performance of Contel's obligation to pursue the RSA 1 license on behalf of the Partnership and its partners, but, as the Appellate Court recognized, seek substitutional relief instead, in the form of money damages:

> Plaintiffs . . . have not asked the trial court to transfer control of the license. They seek only compensatory damages from defendants for their offenses as general partners, specifically (1) seizing a partnership opportunity for themselves and (2) breach of the provision of the partnership agreement which requires that if the general partner applies for a license to serve another service area, the application shall be on behalf of the partnership.

(*Id.*) In fact, to make clear that they seek damages as opposed to any ownership or control over the FCC license, since the time of the Appellate Court's decision Leaf River and Central Cellular amended their complaints to eliminate the request for relief that sought to require Contel to share all benefits from its interest in Illinois RSA 1 – an important fact that Contel neglects to mention. (*See* Pet. at 13.) Contel also fails to mention the primary request for relief in both the original and amended complaints, namely, "compensatory damages in an amount to be determined at trial." (Pet. at A28, A39.)

REASONS WHY THE PETITION SHOULD BE DENIED

Contel's petition should be denied because no final judgment or decree has been entered, concerning the "transfer" or "ownership" of an FCC license or otherwise. Indeed, Contel casts its entire argument hypothetically, in order to discuss the federal questions that it believes would arise "*if* the state court were to grant" certain relief. (Pet. at 14) (emphasis supplied). Further, one of the two forms of relief Contel believes would offend federal law has already been removed from the case by virtue of subsequent proceedings. Plaintiffs' remaining requests for relief have not yet been granted or denied, rendering Contel's petition premature.

Even if this Court were to consider the merits of Contel's petition, no reason to grant certiorari is presented. Contel claims that the Illinois Appellate Court erred by relying on Section 414 of the Federal Communications Act and holding that these private disputes could

proceed in Illinois state court. Section 414 is clear, however, and has been consistently applied the way the Illinois Appellate Court did here. The bulk of Contel's petition simply recites patently irrelevant FCC regulations and asserts that their potential application to the particular facts of this action should be deemed "important." By failing to cite any decisions by any court agreeing with its position, however, Contel has raised no conflict of authority requiring review. Moreover, no question of law exists that has not been settled by this Court, nor has one been decided in a way that conflicts with the decisions of this Court. Indeed, Contel simply attempts to avoid this Court's well-established precedent. Finally, even the FCC, whose policy Contel claims needs protecting, has consistently repudiated Contel's position. In short, this purely private dispute raises no questions of general importance appropriate for review.

I. THIS COURT LACKS JURISDICTION TO HEAR THE PETITION UNDER 28 U.S.C. § 1257 BECAUSE THE ORDER DENYING PETITIONERS' INTERLOCUTORY APPEAL WAS NOT A FINAL JUDGMENT OR DECREE.

This Court lacks jurisdiction to hear Contel's petition because no final judgment or decree has been entered in these cases. Contel does not even address this threshold issue in its petition, instead launching into arguments which, by their contingent nature, demonstrate that no review should take place at this time. The petition attacks a lower state court's interlocutory order affirming the denial of Contel's motion to dismiss. This Court's review of state court decisions is limited, however, to "[f]inal

judgments or decrees rendered by the highest court of a State in which a decision could be had." 28 U.S.C. § 1257. Therefore, the general rule is that the state court judgment "must . . . be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court." *Market Street Ry. v. Railroad Commission*, 324 U.S. 548, 551 (1945). If acts remain to be performed on remand that are not merely ministerial, and that might themselves create a federal question, the judgment is normally deemed nonfinal and nonreviewable. *Houston v. Moore*, 3 Wheat. 433, 434 (1818); *San Diego Gas & Elec. Co. v. City of San Diego*, 450 U.S. 621, 632-33 (1981); *O'Dell v. Espinoza*, 456 U.S. 430 (1982). Here, the Appellate Court's interlocutory order remanded these cases for trial in the circuit court on the merits. Thus, under the literal terms of § 1257, such an order is not reviewable.

The finality requirement of § 1257 serves several important policies: "(1) it avoids piecemeal review by federal courts of state court decisions; (2) it avoids giving advisory opinions in cases where there may be no real 'case' or 'controversy' in the sense of Art. III; (3) it limits federal review of state court determinations of federal constitutional issues to leave at a minimum federal intrusion in state affairs." *North Dakota Pharmacy Board v. Snyder's Stores*, 414 U.S. 156, 159 (1973). Granting Contel's petition would offend all of these principles. First, Contel seeks piecemeal review of an interlocutory order denying its motion to dismiss complaints – which have since already been amended. Any ensuing final disposition by the trial court will likely beget further appeals by one or

both sides, which may in turn present reviewable federal issues.

More problematic, however, is that Contel's petition seeks an advisory opinion on the relevance and application of FCC regulations to forms of relief that have not yet been ordered, including one request for relief – the injunction to share benefits – that has already been eliminated from the case as a result of plaintiffs' amendment of their complaints. In fact, Contel prefaces its entire argument on a contingency, "*if* the state court were to grant the requested relief." (Pet. at 14) (emphasis supplied). Although Contel claims that *if* the trial court were to grant the injunction which plaintiffs no longer seek or an accounting, such an order would violate federal law (Pet. at 13, 17, 22), nowhere does Contel show how granting the primary claim for compensatory damages would implicate federal law. Since no court has determined which, if any, form of relief ought to be awarded against Contel, the petition is hopelessly premature. *See San Diego Gas & Elec. Co.*, 450 U.S. at 633 (declining review where no final decision on the propriety of all possible remedies). Finally, Contel's petition would also cause federal intrusion in the State of Illinois' affairs, by interrupting the state court's adjudication of claims for breaches of Illinois laws. *See Radio Station WOW v. Johnson*, 326 U.S. 120, 124 (1945) (the finality prerequisite "derives added force when the jurisdiction of this Court is invoked to upset the decision of a State court").

Although this Court may apply a "pragmatic" interpretation of the finality requirement in exceptional circumstances where a case is not literally concluded, *see Bradley v. Richmond School Board*, 416 U.S. 696, 722-23 n.28

(1974), none of those circumstances exists here. In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), this Court delineated four narrow categories where review of state decisions prior to final disposition of a case may be appropriate. The first category is "where for one reason or another the federal issue is conclusive or the outcome of proceedings preordained." *Id.* at 479. This exception does not apply here because neither the outcome of a trial on the merits, nor the proper form of relief to be granted, was decided or preordained by the interlocutory order.

The second exception to the finality rule concerns situations "in which the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." *Id.* at 480. The Court gave as an example *Radio Station WOW, Inc.*, where review was granted to an order of the Nebraska Supreme Court finding fraud and directing the transfer of the properties of a federally licensed radio station. By contrast, the instant interlocutory order did not adjudicate the merits of the claims or direct a transfer of a licensed facility. Contel simply claims that such a transfer order, *if* one were to be issued, would cause a "collision" with federal law. (Pet. at 17, 19.) Given that Leaf River and Central Cellular do not even seek any transfer, however, Contel's inchoate fear of a collision does not warrant this Court's immediate intervention.

The third exception to the finality requirement may occur "where the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the

case." *Id.* at 481. This category applies to cases where, if the petitioner were to lose on the merits, "governing state law would not permit him again to present his federal claims for review." *Id.* Such an exception again is inapposite because upon a final judgment and grant of any relief, Contel would have an opportunity to raise on appeal any appropriate federal defense to such an award.

The final exception to finality under *Cox Broadcasting Corp.* is "where the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by this Court, and where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action" *and* where "a refusal immediately to review the state-court decision might seriously erode federal policy." *Id.* at 482-3. To define this narrow category, the Court cited *Construction Laborers v. Curry*, 371 U.S. 542 (1963), which reviewed the grant of a temporary injunction enjoining a union from picketing even though the National Labor Relations Board had exclusive jurisdiction over the claim. Jurisdiction in *Curry* also rested on the ground that the union had no defense to a permanent injunction other than its federal one that had already been decided. 371 U.S. at 542. By contrast, no relief has been granted in these cases, and Contel's arguments merely address a portion of the relief that might be awarded. Further, no important federal interests will be eroded by permitting the Illinois state court to determine the state law claims for breach of contract and fiduciary duty and to determine what relief, if any, is permissible

and appropriate. *See Flynt v. Ohio*, 451 U.S. 619, 622 (declining review where delay until a final judgment would not seriously erode federal policy). Rather, the important federal interest here is to avoid creating any false "conflict between the courts of two different governments," an interest which is most effectively promoted by denying Contel's premature petition for review of an interlocutory state court order. *Radio Station WOW*, 326 U.S. at 124.

II. NO QUESTION EXISTS THAT THE COMMUNICATIONS ACT EXPRESSLY PRESERVES STATE COURT REMEDIES FOR THE INSTANT CLAIMS FOR BREACH OF CONTRACT AND FIDUCIARY DUTY.

Contel's apparent basis for requesting review of the lower state court decision is that the Illinois Appellate Court relied too "heavily" on Section 414 of the Communications Act in holding that these disputes should proceed in the state trial court. (Pet. at 14.)[2] Contel has failed, however, to raise any question, let alone one deserving of certiorari, about the language of § 414 of the Communications Act in relation to these garden-variety breach of contract and fiduciary duty actions. The express language

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[2] This type of argument, that a misapplication of law occurred, is in itself a weak basis for seeking review. *See* S.Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law.")

of the Communications Act provides the best reason that Contel's claim of preemption is unfounded:

> Nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies.

47 U.S.C. § 414. Thus, Contel's claim that "the relief requested" by Leaf River and Central Cellular has somehow been preempted flies in the face of Congress's express preservation of common law and statutory remedies, of which compensatory damages is the most obvious example.

A. CONTEL'S PATENTLY IRRELEVANT AUTHORITIES RAISE NO QUESTION FOR REVIEW.

Glossing over the express savings provision of Section 414, Contel cites a series of FCC regulations and decisions that are not only prematurely raised, (*see* Section I, *supra*), but also irrelevant. Contel argues that Leaf River and Central Cellular seek to share "control over" or "ownership in" the Illinois RSA 1 FCC license. (Pet. at 14, 15.) From this presumption, Contel argues that because such a result would violate FCC regulations under the particular facts of these cases, the claims against Contel must be preempted. In order to make this argument, however, Contel persists in an intentional misunderstanding of plaintiffs' original complaints and ignores plaintiffs' amended complaints. Plaintiffs do not request transfer of, an ownership interest in, or control over, Contel's FCC license. Rather, as plaintiffs have repeatedly

explained to defendants, as they expressly advised the courts below, as the Appellate Court recognized (see p. 4 *supra*), and as plaintiffs have made explicit by amending their complaints, plaintiffs seek only money damages for Contel's breaches of common law contract and fiduciary obligations, in an amount equal to the value of the interest which Contel obtained by breaching its duties with regard to the business opportunity in Illinois RSA 1. The series of statutes and regulations cited by Contel never were intended to address such a purely private dispute, and have never been so applied.

Thus, Contel's citation of 47 C.F.R. § 22.942 (Pet. at 15), which prohibits a party from holding an "ownership interest" in both licenses for one cellular market, is irrelevant because respondents seek no such interest. Likewise, Contel's citation of Section 310 of the Communications Act (Pet. at 17), which requires an application to the FCC before "transfers of control" of an FCC license, is equally beside the point because plaintiffs seek no such transfer. Finally, Contel's citation of Section 332 of the Communications Act (Pet. at 18-19), pertaining to "entry regulation," remains a *non sequitur*. As the Illinois Appellate Court recognized, by no stretch of language, or imagination, do Leaf River and Central Cellular seek for the state of Illinois "to regulate the entry of or the rates charged by any commercial mobile service." (Pet. at A16-17). At bottom, Contel simply presents no decision by any court, or by the FCC, applying these regulations and provisions to a common law claim, to a request for money damages, or to any question of federal preemption.

B. CONTEL RAISES NO QUESTION APPROPRIATE FOR REVIEW BECAUSE THIS COURT'S DECISIONS HAVE CONSISTENTLY RECOGNIZED A STATE COURT'S POWER TO ADJUDICATE STATE LAW CLAIMS, EVEN WHERE THEY PERTAIN TO AN FCC LICENSED BUSINESS, AND NO CONFLICT EXISTS.

Contel fails to present any conflict between lower court decisions or those of this Court warranting certiorari. This Court recognized the respective spheres of jurisdiction of the FCC and state courts in *Radio Station WOW v. Johnson*, 326 U.S. 120 (1945). In that decision, the plaintiff sued in state court to have a lease and assignment of an FCC license set aside for fraud. 326 U.S. at 121. The Nebraska Supreme Court ordered that the lease and license be set aside, and ordered an accounting of the station's revenue by the lessee. *Id.* at 122. This Court permitted the accounting to proceed in the state court, and further held "[w]e have no doubt of the power of the Nebraska court to adjudicate, and conclusively, the claim of fraud in the transfer of the station . . . and upon finding fraud to direct a reconveyance of the lease to the [plaintiff]." *Id.* at 131. The Court explained, "[t]he 'public interest' with which the Commission is charged is that involved in granting licenses. Safeguarding of that interest can hardly imply that the interest of the States in enforcing their own laws against fraud have been nullified insofar as licensed facilities may be the instruments of fraud." *Id. See also FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1939) ("The Communications Act is not designed primarily as a new code for the adjustment of conflicting private rights through adjudication"). To the

same effect, in *Regents of the University System of Georgia v. Carroll*, 338 U.S. 586 (1950), this Court determined that a state court had the power to award damages for breach of contract even where performance under the contract would have violated FCC policy. The Court stated, "[w]e do not read the Communications Act to give authority to the Commission to determine the validity of contracts between licensees and others." *Id.* at 602. Similarly, the defense of legal impossibility was summarily disposed as "a matter of state law." *Id.* at 594. These decisions firmly support the exercise of jurisdiction by an Illinois court in enforcing Illinois laws against breach of contract and breach of fiduciary duty. Contel fails to mention *Radio Station WOW* or *Regents* until the penultimate page of its petition, and then only to waffle between: (a) weakly distinguishing them as involving a radio station instead of a rural cellular telephone license, and (b) suggesting that they are somehow wrong for "today's environment." (Pet. at 23.) Neither assertion merits this Court's review.

Further, the Communications Act has also been consistently construed by the lower courts the way the Illinois courts did here – as preserving private, independent state law claims among licensees for the courts, not for the FCC. *See, e.g., United Tel. Co. of Carolinas, Inc. v. FCC*, 559 F.2d 720, 723 (D.C. Cir. 1977) (affirming an FCC decision not to adjudicate a dispute among joint venturers, "the Communications Act . . . should not be turned into a mechanism whereby participants in a joint communications project can force the Federal Communications Commission to arbitrate contractual disputes over the division of residual revenues from their joint venture. The purpose of the Act is to protect the public interest

rather than to provide a forum for the settlement of private disputes"); *KVHP TV Partners, Ltd. v. Channel 12 of Beaumont, Inc.*, 874 F. Supp. 756, 762 (E.D. Tex. 1995) (section 414 "expressly preserves state causes of action for breaches of duties that are not created by the Communications Act"). Thus, by literally applying Section 414, the Illinois Appellate Court broke no new ground.[3]

C. CONTEL RAISES NO QUESTION FOR REVIEW BECAUSE THE FCC CONSISTENTLY AGREES WITH THE INTERPRETATION OF THE COMMUNICATIONS ACT ADOPTED BY THE COURTS BELOW.

Notably, Contel also fails to present any true conflict between the lower court order and decisions of the FCC, citing no FCC decisions that purport to adjudicate claims such as the ones made here. In fact, an examination of FCC decisional law reveals that the FCC refuses to become involved in private matters such as this, instead referring them back to the courts – even where questions arise regarding control of cellular licenses. *See, e.g., In the*

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[3] Contel errs in suggesting that OBRA's amendment to the Communications Act somehow trumps the savings clause of section 414, which Congress left untouched. (Pet. at 18-19.) The lower court properly refused to infer that such oblique language on "entry regulation" evinces a legislative intent to override the express savings clause preserved in the Act. (Pet. at A16-17.) *See also Cooperative Comm. v. AT&T Corp.*, 867 F. Supp. 1511, 1516 (D. Utah 1994) (post-OBRA, holding that "inclusion of the [section 414] savings clause clearly indicates Congress' intent that independent state law causes of action , such as interference with contract or unfair competition, not be subsumed by the Act, but remain as separate causes of action").

Matter of Applications of Centel Corp., 8 FCC Rcd. 1829, 1831 (1993) (refusing to consider a claim that transfer of control of a cellular license would violate the parties' partnership agreements, "[t]he Commission has repeatedly stated that it is not the proper forum for the resolution of private contractual disputes, noting that these matters are appropriately left to the courts or to other fora that have the jurisdiction to resolve them"); *In re Applications of Decatur Telecasting, Inc.*, 7 FCC Rcd. 8622, 8624 (1992) (same); *In re Application of Rodney A. McDaniel*, 4 FCC Rcd. 1736 (1989) ("any harm which [petitioner] might suffer from the transaction can be satisfied by money damages pursuant to local judicial determination. Thus, *our action does not in any way prejudice any remedy to which a court may ultimately determine MC is entitled*") (emphasis supplied, citations omitted); *In re Applications of Wind N' Sea FM Limited Partnership*, 7 FCC Rcd. 2293, 2294 n.5 (1992) ("[t]he Commission has long held that it has neither the authority nor the machinery to adjudicate alleged claims arising out of private contractual agreements"); *In re Applications of KQED, Inc.*, 6 FCC Rcd. 625, 626 (1991) (same). Finally, consistent with this policy it is worth noting here that the FCC has never held that the mere award of compensatory damages constitutes an ownership interest or control over an FCC license.[4]

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[4] Moreover, even if, *arguendo*, the relief ultimately awarded in this litigation does involve matters touching on an interest of the FCC, the court could at that time simply fashion an appropriate remedy. *See Radio Station WOW*, 326 U.S. at 132 ("State power is amply respected if it is qualified merely to the extent of requiring it to withhold execution of that portion of its

Thus, not even the FCC agrees with Contel's position that the claims in this case should not be adjudicated by the Illinois courts, but would refuse to resolve this private dispute concerning the interpretation of a contract or fiduciary duties or to award damages for the breach of such duties. In sum, the overwhelming weight of authority, all of which Contel fails to address in its petition, agrees that these actions belong where they are now: awaiting trial on the merits in Illinois state court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

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decree requiring retransfer of the physical properties until steps are ordered to be taken, with all deliberate speed, to enable the Commission to deal with new applications in connection with the station").